

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CLYDE BAILY WILLIAMS,

Petitioner,

v.

MARGARET A. MARONEY,

Respondent.  
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ORDER

03-C-0549-C

Judgment was entered in this case on October 21, 2003, dismissing the case as legally frivolous and recording a strike against petitioner pursuant to 28 U.S.C. § 1915(g). Now petitioner has filed an untitled document dated October 27, 2003, which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. In addition, petitioner has written a letter to the court asking various questions about how to take an appeal.

The purpose of Rule 59 is to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings. Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986). In his motion, petitioner argues that when this court found his original complaint to be fatally flawed, it should have allowed him to amend

his complaint before dismissing the case. However, petitioner does not suggest what he would have alleged in an amended complaint that would have turned his legally frivolous claim into one that passed constitutional muster. He does appear to concede that he has no claim of constitutional wrongdoing against the respondent he named in the caption of his complaint, but notes that another public defender may have failed to adequately represent him in his state criminal proceedings. However, this claim bears no apparent relationship to the claim petitioner raised in this lawsuit, which was that respondent Maroney violated petitioner's right "to be free from the ex post facto clause" when she moved to remit portions of petitioner's sentences. To the extent that petitioner may now be arguing that he is entitled to lesser sentences or the nullification of a conviction because of his lawyer's inadequate representation, the claim is one that cannot be raised in the context of a § 1983 action, but rather must be brought in a petition for a writ of habeas corpus after petitioner exhausts his state court remedies.

Because nothing in petitioner's Rule 59 motion convinces me that I erred in denying him leave to proceed in forma pauperis and dismissing his case as legally frivolous, his motion to alter or amend the judgment must be denied.

The time for filing an appeal runs for all parties from the date of entry of an order disposing of a timely filed Rule 59 motion. See Fed. R. App. P. 4(a). Therefore, if petitioner intends to file a notice of appeal, he has thirty days from the date of this order in which to

do so.

The Federal Rules of Appellate Procedure govern petitioner's appeal. Those rules should be available to petitioner in the prison library. The notice of appeal should be filed in the district court, and not in the court of appeals. It should be accompanied by a check or money order made payable to the clerk of court in the amount of \$255, which is the cost of an appeal filed on or after November 1, 2003. If petitioner does not have the money to pay the full amount of his appeal at the outset, he will have to apply to this court for leave to appeal in forma pauperis. However, the court cannot grant petitioner pauper status unless he 1) qualifies financially; 2) does not have three strikes against him under 28 U.S.C. § 1915(g); and 3) passes the good faith test for taking an appeal. As a general rule, a petitioner will not pass the good faith test for taking an appeal if he is appealing the same issues the district court found to be legally frivolous in denying him leave to proceed in forma pauperis in the first instance. See Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982) (court must find bad faith where petitioner appeals same claims court found to be without legal merit). If petitioner's request for leave to proceed in forma pauperis on appeal is denied and the appeal is certified as having been taken in bad faith, petitioner will owe the \$255 immediately and will not be allowed to pay the fee in installments consisting of 20% of his monthly income.

Enclosed with this memorandum as petitioner requested is another set of forms for

filing a complaint under 42 U.S.C. § 1983.

ORDER

IT IS ORDERED that petitioner's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED.

Entered this 5th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge